

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PETER FUCHS and DIANE L. FUCHS, his wife,)	CIVIL DIVISION
)	
)	No: 03-1953
Plaintiffs,)	
)	The Honorable Gary L. Lancaster
vs.)	
)	ELECTRONICALLY FILED
SHENANGO TOWNSHIP, CHIEF OF)	
POLICE RON PRESTON and OFFICER)	
JASON NEWTON,)	
)	
Defendants.)	

DEFENDANTS' PRE-TRIAL STATEMENT

AND NOW, come Defendants, SHENANGO TOWNSHIP, RON PRESTON and JASON NEWTON, by and through their counsel, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, and file the within Pre-Trial Statement pursuant to F.R.C.P. 26 as follows:

NARRATIVE

On November 15, 2002, at 6:33 p.m., Officer Newton of the Shenango Township Police Department was dispatched to a structure fire. Officer Newton arrived at the scene at 6:38 p.m. and reported that the structure, a residence owned by Plaintiffs' brother, was fully engulfed in flames. Initially Officer Newton was provided with police back-up by Officer Dale McAdams.

Shortly after arrival Officer Newton established a perimeter utilizing natural landmarks which all of the spectators apparently understood because they fairly complied with Officer Newton's order.

At 7:33 p.m. Officer McAdams was dispatched to a motor vehicle accident. Officer McAdams therefore left the scene of the fire.

Officer Newton was advised by the home owner that weapons were stored in the structure. Officer Newton provided this information to firefighters who subsequently located a gun cabinet. The gun cabinet was removed from the residence and placed on a patio area just outside the residence. At this time although the structure was no longer engulfed in flames, firefighters were still engaged in actively searching the remains of the structure for any hot spots and engaging in other firefighting activities.

Officer Newton instructed the home owner to examine the gun cabinet to ensure that all of the guns had been retrieved. Officer Newton permitted the home owner to walk to the gun cabinet for this specific purpose. The officer then noted other family members, particularly Plaintiff Peter Fuchs, walking toward the home. Officer Newton ordered Plaintiff several times not to approach the house. The officer was met with hostility and profanity from Peter Fuchs. The officer instructed Mr. Fuchs to back away from the scene of the fire which other family members had done, however a scuffle ensued which resulted in Officer Newton advising Plaintiff that he was under arrest.

Plaintiff refused to be taken into custody and instead resisted with violence. Officer Newton then deployed OC spray and immediately afterward Plaintiff permitted himself to be handcuffed.

Plaintiff was immediately taken to a waiting ambulance on the property where he was administered to by paramedics. Plaintiff wife arrived on the scene and was advised as to what had transpired. Plaintiff husband agreed to leave the scene of the fire in the company of his wife. Officer Newton made a decision to release Plaintiff husband from the scene because at that time there were a number of police officers from a neighboring community providing security at the fire and they could not remain at the fire scene. If Officer Newton had continued with the processing of Plaintiff at that time, it would have resulted in the fire scene being without any law enforcement presence.

Plaintiff left the scene of the fire in the company of his wife and there were no further incidents involving Plaintiff nor any other family member for the remainder of the time that police and fireman attended to the firefighting duties.

Plaintiff Peter Fuchs accepted a guilty plea with the Lawrence County District Attorney's office to some of the criminal charges brought by Officer Newton.

DAMAGES

Not applicable to Defendants.

WITNESSES

The following witnesses will be called at time of trial:

1. Defendant Jason Newton formerly of the Shenango Township Police Department.
2. Dale McAdams formerly of the Shenango Township Police Department.

3. Ronald Preston formerly Chief of Shenango Township Police Department.
4. William Williams, Shenango Township fireman and former Shenango Township Supervisor.
5. Gary Spohn, West Middlesex firefighter and West Middlesex Borough Street Foreman.
6. Richard Garrett, West Middlesex Fire Chief.
7. George Seifert, West Middlesex firefighter.
8. Patrick Baker, Wheatland firefighter.
9. Michael Runner, paramedic and Farrell firefighter.
10. James Jones, McGonigles Ambulance Company crew.
11. Christine Hoover, McGonigles Ambulance Company crew.
12. Jeremiah Davis, Wheatland firefighter.
13. Ronald Ziglear, Chief of Shenango Township Fire Department.

DEPOSITION TESTIMONY

It is not believed at this time that there will be designation of any deposition testimony.

EXHIBITS

1. CAD Incident Report, event ID 021115-104970P.
2. Shenango Township Police Department arrest report, including narrative, case #02-3461, consisting of three pages.
3. Police Criminal Complaint including Affidavit of Probable Cause.
4. Copy of arrest warrant, consisting of two pages.
5. Transcript of Preliminary Hearing complete with numerous notes in the nature of commentary written by Plaintiff Peter Fuchs.
6. Certified criminal court records evidencing Plaintiff Peter Fuchs' guilty plea.

LEGAL ISSUES

Defendants will file a Motion for Summary Judgment with regard to the following issues:

1. Dismissal of former Chief Ronald Preston in his official capacity as it is redundant of the claims brought against Shenango Township.
2. Dismissal of former Chief Ronald Preston in his personal capacity as he had no personal involvement with any of the events which form the basis of Plaintiffs' Complaint.
3. In the alternative there has been no evidence to support a claim of punitive damages against Chief Preston.
4. The lost of consortium claims brought pursuant to alleged federal civil rights violations on behalf of Plaintiff wife must be dismissed as there is no recognized loss of consortium claim in civil rights law.
5. Dismissal of Diane Fuchs as a Plaintiff as she was not personally present during any of the relevant events which form the basis of Peter Fuchs' claims and she herself did not suffer any injury directly as a result of any of the actions or inactions of Officer Newton nor any of the other named Defendants.
6. Dismissal of Peter Fuchs false arrest and malicious prosecution claims as he pled guilty to criminal offenses arising out of this incident.

EXPERT DISCLOSURES

Based upon evidence obtained from Plaintiffs and on Plaintiffs' Pre-Trial Statement, it is not anticipated that Defendants will present any expert testimony.

DOCTOR REPORTS

In that Plaintiffs have not provided the Court nor Defendants with any medical reports supporting causation between any acts of any of the Defendants and any alleged injuries suffered by Plaintiffs, it is not anticipated that Defendants will rely upon any expert medical opinion.

RESERVATION OF RIGHTS

Defendants reserve the right to supplement the within Pre-Trial Statement should circumstances warrant. Furthermore, Defendants reserve the right to rely upon any witness or item of evidence set forth in Plaintiffs' Pre-Trial Statement.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

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